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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 GARY CASTERLOW-BEY,

7 Plaintiff,

8 v.

9 J. KEISLER, et. al.,

10 Defendants.

Case No. C17-5561 BHS-TLF

REPORT AND  
RECOMMENDATION

Noted for October 6, 2017

11 The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United  
12 States Magistrate Judge Theresa L. Fricke. Plaintiff Gary Casterlow-Bey filed a Motion for TRO  
13 (“Motion”) on September 5, 2017. Dkt. 11. The Court concludes Plaintiff is seeking injunctive  
14 relief on a non-party and on a matter which is outside the issues in this action. Therefore, the  
15 Court recommends the Motion be denied.

16 **BACKGROUND**

17 Plaintiff, an inmate at the Pierce County Jail, filed a complaint alleging neglect of his  
18 medical needs and lack of access to an orthopedic surgeon. Dkt. 6, at 3. He sues defendant J.  
19 Keisler and the Lakewood Police Department. In his motion, plaintiff alleges that due to  
20 defendant J. Keisler’s “false and misleading” police report, he has been denied access to hip  
21 replacement surgery. *Id.*

1 In his Motion, plaintiff alleges non-party Pierce County jail officials are not providing  
2 him with access to envelopes, paper, pencils, and an eraser. Dkt. 11, at 2. Plaintiff requests the  
3 Court to order jail officials to provide him with these supplies. *Id.*

#### 4 DISCUSSION

5 Under the Prison Litigation Reform Act (“PLRA”),

6 The court shall not grant or approve any prospective relief unless the court finds  
7 that such relief is narrowly drawn, extends no further than necessary to correct the  
8 violation of a Federal right, and is the least intrusive means necessary to correct  
9 the violation of the Federal right. The court shall give substantial weight to any  
adverse impact on public safety or the operation of a criminal justice system  
caused by the relief.

10 18 U.S.C. § 3626(a)(1)(A).

11 The purpose of preliminary injunctive relief is to preserve the status quo or prevent  
12 irreparable injury pending the resolution of the underlying claim. *Sierra On-line, Inc. v. Phoenix*  
13 *Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). “A plaintiff seeking a preliminary injunction  
14 must establish” (1) “he is likely to succeed on the merits,” (2) “he is likely to suffer irreparable  
15 harm in the absence of preliminary relief,” (3) “the balance of equities tips in his favor,” and (4)  
16 “an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20,  
17 (2008). The Ninth Circuit also allows for the “serious questions” variation of the test, where “a  
18 preliminary injunction is proper if there are serious questions going to the merits; there is a  
19 likelihood of irreparable injury to the plaintiff; the balance of hardships tips sharply in favor of  
20 the plaintiff; and the injunction is in the public interest.” *Lopez v. Brewer*, 680 F.3d 1068, 1072  
(9th Cir. 2012).

21 The Court finds plaintiff failed to show he is entitled to injunctive relief because the  
22 Motion seeks injunction against a non-party and is unrelated to the claims alleged in the  
23 complaint.  
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1           **A. Injunction against a non-party**

2           In the Motion, plaintiff alleges non-party Pierce County jail officials are hindering his  
3 ability to litigate. Dkt. 11. Pierce County jail officials are not nor have ever been a party to this  
4 lawsuit. This Court cannot issue an order against individuals who are not a party to a suit  
5 pending before it. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100 (1969). To  
6 the extent plaintiff is seeking a court order compelling jail officials to act, his Motion must be  
7 denied.

8           **B. Motion unrelated to complaint**

9           The Court also cannot issue the requested TRO because the issues and relief sought in  
10 plaintiff's Motion are unrelated to the claims raised in this lawsuit. In a TRO, it is appropriate to  
11 grant "intermediate relief of the same character as that which may be granted finally." *De Beers*  
12 *Consol. Mines v. U.S.*, 325 U.S. 212, 220 (1945); *Kaimowitz v. Orlando*, 122 F.3d 41, 43 (11th  
13 Cir. 1997). However, a court should not issue a TRO when the relief sought is not of the same  
14 character and the injunction deals with a matter lying wholly outside the issues in the underlying  
15 action. *Id.*

16           The complaint, which was filed August 11, 2017, alleges plaintiff's rights were violated  
17 when he was not scheduled for hip replacement surgery due to J. Keisler's "false and misleading  
18 police report." Dkt. 6. In the Motion, plaintiff complains unnamed non-party Pierce County jail  
19 officials do not provide plaintiff with envelopes, paper, and pencils. *Id.*

20           As the allegations raised in the Motion are unrelated to defendants' denial of access to  
21 medical care, and as plaintiff seeks relief which is not the same character as the complaint, the  
22 Court cannot issue the injunctive relief requested by plaintiff. *See Pac. Radiation Oncology, LLC*  
23 *v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015) ("When a plaintiff seeks injunctive relief  
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1 based on claims not pled in the complaint, the court does not have the authority to issue an  
2 injunction.”). Accordingly, the Court recommends the Motion be denied.

### 3 CONCLUSION

4 As plaintiff’s Motion is not based upon actions taken by defendants or by the claims in  
5 the underlying lawsuit, the Court recommends the Motion be denied.

6 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
7 Procedure, the parties shall have **fourteen (14) days** from service of this Report to file written  
8 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
9 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time  
10 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **October**  
11 **6, 2017**, as noted in the caption.

12 Dated this 20th day of September, 2017.

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Theresa L. Fricke  
17 United States Magistrate Judge  
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